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VIA ECF and EMAIL

Hon. Katherine Polk Failla
United States District Court
40 Foley Square
New York, NY 10007

Re: *Flycatcher Corp. Ltd. et al v. Affable Avenue LLC, et al.*
No. 1:24-cv-09429-KPF

Dear Judge Failla:

This firm represents plaintiffs Flycatcher Corp. Ltd. and Flycatcher Toys Inc. (collectively “Flycatcher”). We write concerning the Response to Order to Show Cause filed this morning by defendant Affable Avenue LLC.

Flycatcher opposes Affable Avenue’s request to file a further brief and other papers in support of its motion to dismiss. That would prejudice Flycatcher by further delaying resolution of the motion and resolution of the case. On May 23, 2023, the Court granted Defendants four weeks to file their motions, by June 20. (ECF Dkt. No. 144) Affable Avenue’s counsel admits he knew of the problems with his brief on June 22, and claims that within 24 hours, he prepared a corrected brief. (ECF Dkt. No. 164 at 6) While he claims such was shared with counsel for his co-defendant, such was not provided to either Flycatcher or the Court. Permitting Affable Avenue to now file a new brief and other papers would only delay matters further, to the prejudice of Flycatcher.

We also note that Affable Avenue asserts its intention to submit significant factual content, including a sworn declaration. This is entirely improper on a motion to dismiss, which is limited to the allegations of the pleadings.

Accordingly, Flycatcher requests that the Court deny the request for Affable to be permitted to submit new papers in support of its motion. We would consent to Affable Avenue filing an Answer at this time.

Respectfully Submitted,
Tal S. Benschar
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cc: All Counsel (via ECF)